IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court’s order whether the case is or not approved for reporting

Chapter VIII, Rule 32(2) (b)

Description of case

W.P. 1376 OF 2001, Decided on 21.8.2003

Jabar Singh Vs.P.O. Labour Court 4 ors

A.F.R. (Approved for Reporting)

Not approved for reporting

Date 21.8.03 Initials of Judge

Note- Bench reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

Reserved

(1) Writ Petition No. 1376 (M/S) of 2001

Jabar Singh and eleven others ...Petitioners
Versus
Presiding Office, Labour Court and three others ....Respondents

(2) Writ Petition No. 1015 (M/S) of 2001

Harpal Singh and six others ...Petitioners
Versus
Presiding Office, Labour Court and three others ....Respondents

(3) Writ Petition No. 3008 (M/S) of 2001

Rakesh Singh ...Petitioners
Versus
Presiding Office, Labour Court and three others ....Respondents

---

Hon'ble P.C.Verma, J.

The petitioners in the above writ petitions were appointed as Scalers between 982-83. Some of them were appointed directly and some of them by promotion. The services of the petitioners were retrenched by order dated 30.5.1995 and 31.5.1995. The petitioners raised an industrial dispute before the Labour Court, Dehradun. The learned Labour Court held that retrenchment order was legal and valid as the provisions of section 6-N of the U.P. Industrial Disputes Act were fully compiled with, the provisions of Section 25N of the Industrial Disputes Act are not attracted as the Forest corporation is not an industrial establishment as defined

in Section 25L of Chapter V-B of Industrial Disputes Act. Feeling aggrieved by the award dated 24.12.1997 contained in annexure No. 3 to the writ petition no. 1376 (M/S) of 2001, the award dated 24.12.97 contained in writ petition no. 1015 (M/S) of 2001, vide annexure no.3, the award dated 24.12.97 contained in annexure no.4 to the writ petition no.3008 (M/S) of 2001 and the retrenchment orders impugned in these writ petitions, the petitioners have filed these petitions for seeking writ of certiorari to quash the same.

The question that falls of determination before this Court is whether the provisions of Section 25N of the Industrial Disputes Act are attracted or not and whether for non-compliance of the conditions contained in Section 25N retrenchment order as well as award are illegal and non-est and are liable to be set aside.

The petitioners contended before the Labour Court that the Forest Corporation is a 'factory' as defined under clause (m) of Section 2 of the Factories Act where the manufacturing process is carried n by engaging the workmen for cutting the trees by axe and changing the shape of the timber into logs by using hand driven saw. In process a large number of workmen (more than 100 workmen) work. The area of the land over which the aforesaid activity is carried on is a premises. Therefore, the Corporation is an establishment within the definition of industrial establishment under Section 25L contained in Chapter V-B. Therefore, the provisions of Section 25N were applicable and without complying the procedure

prescribed for retrenchment under Section 25N contained n Chapter V-B, retrenchment order was null and void.

Reliance was placed by the learned counsel for the petitions before the Labour Court on the judgment of the Apex Court in ***A.M. Bhiwendiwala v. State of Bombay reported in AIR 1962 SC page 29*** in which the Apex Court has held that the meaning of premises is wide and is used to denote the 'land without any boundary'.

The learned counsel for the employer-corporation contended before the Labour Court that the Corporation is **not** 'a factory' within the definition of Factories act, as Forest Corporation dies not work in any premises of place surrounded by a boundary, corporation undertakes the work of cutting of trees earmarked at different places in the forest, which cannot be said to be factory. Power driven saw machine can be a factory but no saw machine was working in Garhwal region at the time of retrenchment of the petitioners.

The Labour Court, after considering the rival contentions of the parties before it, held that the Forest Corporation cannot be said to be factory under the Factories Act. The Labour Court while recording the foresaid finds, gave the following reasons in the judgment:-

> "*in these references which are under consideration before me, the forests cannot be said to be open land or premises and also cutting of trees is not a manufacturing process*

> *because the log made by cutting of trees is also a raw material which are carried in the plains and hills. This cannot be called manufacturing process because he manufacturing process begins later on by converting the logs into furniture and building material."*

Case of ***A.M. Bhiwendiwala v. State of Bombay*** (supra) were different than those of the instant case.

The Labour Court relied upon the Apex Court judgment in Civil Appeal No. 785 of 1986, decided on 26.10.1994, reported in 1995 L.L.J. Vol. II, page 648 regarding the definition of factory as under;

> *"The ordinary meaning of ht word precinct is a piece of land including its buildings or a building together with its grounds or apartments and 'precincts' means the area surrounding a place. The words any premises including precincts thereof including all buildings with the surrounding which form part of one unit."*

The Labour Court after holding the Corporation is not a factory as defined under clause (m) of Section 2 of the Factories Act or Mine as defined under clause (j) of sub-section (1) of Section 2 of the Mines Act or Plantation as defined under clause (f) of Section 2 of the Plantations Labour Act, held that the Corporation is not an industrial establishment within the definition of Section 25L under Chapter V-B, therefore, the provisions of Section 25N were not attracted. The Labour Court further held that the references were made under Section 4K of the U.P. Industrial Disputes Act and not under the Industrial Disputes Act, therefore, only the provisions of U.P.

Industrial Disputes Act would apply. The Labour Court placed reliance on U.P. State Electric Supply Company Ltd. V. R.K. Shukla and others decided on 30.4.1969, reported in L.I.C. 1970 page 276-285 para 9.

The learned counsel for the petitioners Ms. Suman Sirohi assailed the finding recorded by the Labour Court that (i) it wrongly held that the meaning of premises and precincts thereof means the building and appurtenant land thereto surrounded by the boundary in which manufacturing process is carried on, while such restricted meaning to the words premises and precincts thereof have been rejected by the Constitution Bench of the Apex Court in ***A.M. Bhiwendiwala v. State of Bombay*** (supra). (ii) the Labour Court misread the judgment in ***A.M. Bhiwendiwala v. state of Bombay*** (supra) and held that the facts of that case were distinct and different than the instant case. (iii) the Labour Court failed to appreciate the meaning assigned by the Apex Court by its Constitution Bench judgment in ***A.M. Bhiwendiwala v. State of Bombay*** (supra) to the words premises and precincts thereof used in the definition of factory as defined under Section 2(m) of Factories Act. (iv) the Labour Court did not consider the definition of manufacturing process defined under the Factories Act, which is an integral part of definition of the factory defined under Section 2(m) of the Factories Act, though the Labour Court has recorded a finding that the trees are cut by the Scalers/Workmen and they change it into logs by hand driven saw, which is a raw material used for manufacturing of furniture etc., the Labour Court failed

to appreciate that cutting of the trees and shaping it into logs is the making of article (within the definition of manufacturing process defined under Section 2(m) of the Factories Act). Ms. Suman Sirohi further submitted that the cutting of trees by the workmen with the help of axe and shaping it into logs in manufacturing process carried on in each region by more than 100 workers in each calendar year. As such, every region of the Forest Corporation, where the aforesaid activities are carried on, is a factory within meaning of Section 2(m) of the Factories Act and an industrial establishment within the definition of Section 25L of the Industrial Disputes Act, as the requirements of Section 25K of Chapter V-B of the Industrial Disputes act are fulfilled. Thus, the retrenchment could only be made by the employer-corporation in accordance with the provisions of Section 25N of the industrial Disputes Act.

On the other hand, learned Counsel for the employer Sri V.K. Bisht tried to support the judgment passed by the Labour Court and submitted that the retrenchment orders are valid and legal and have been passed in accordance with the provisions of Section 6N of the U.P. Industrial Disputes Act. The Labour Court found that there was no illegality in the impugned retrenchment order, therefore, the retrenchment orders are valid and award may be upheld.

The Industrial Disputes Act as enacted in 1947, was a piece of legislation mainly concerned with providing machinery for investigation and settlement of industrial

disputes. There was no provision for the payment of 'lay-off' or 'retrenchment' compensation to the workmen who were 'laid off' or 'retrenched' in certain contingencies. In 1953, as a result of accumulated stocks in textile industry, textile mills were threatened with the consequences of closure of one or more shifts entailing lay-off or retrenchment of a large number of workers employed in the industry. Therefore, in order to avoid industrial unrest in the country, the President of India promulgated the Industrial Disputes (Amendment) Ordinance, 1953 (Ordinance 5 of 1953), which was repealed and replaced by the Industrial Disputes (Amendment) Act, 1953. By Section 3 (Act 43 of 1953) of the amending Act, chapter VA containing the Sections 25A to 25J were inserted. The Act 43 of 1953 was further amended by the Act No. 4 of 1957. Y Act No. 18 of 1957, which was enacted by the Parliament, the new Sections 25FF and 25FFF were substituted for the old Section 25FF. after the amendment in the industrial Disputes Act, the U.P. Industrial Disputes Act, which was earlier at par with the Central Act, was amended by Industrial Disputes (amendment) Act 1957 (U.P. Act I of 1957) and the similar provisions as contained in the Central Act were inserted. The Section 6N of the U.P. Industrial Disputes Act is similar to Section 25F of the Industrial Disputes Act, which is contained in Chapter V-A of the Central Act. The industrial establishment or industrial undertaking was used in the various sections but neither it was defined under the Central Act nor in the State Act. There was no provision of restricting or preventing lay-off or retrenchment neither in the Central

Act nor in the State Act. Therefore, an employer had unfettered right to close down his establishment subject to the provision of sixty days' notice. In view of large scale lay-offs, retrenchments and closures resorted to by big establishments, the Central Government in order to prevent avoidable hardships to the employees and to maintain higher tempo of production and productivity, felt it necessary to put some restrictions on the employer's right to lay-off, retrenchment and closure. With this object in view, the Central Act was amended by the Industrial Disputes (Amendment) act, 1976 (Act No. 32 of 1976) because it was felt that the existing law enabled large scale lay-offs, retrenchments and closures by large companies and undertakings and this has resulted in all around demoralizing effect on workmen.

By this amending Act a new Chapter V-B was added. Effect of this amendment is that Industrial Establishments have been classified into two categories. In one category Chapter V-A will apply and in another category Chapter V-B will apply.

By the same amending Act No.32 of 1976, of the first time, 'industrial establishment' was defined under Section 2-Ka in general, other than definition of industrial establishment under Chapter V-B, which reads as under:-

> *"(ka) "Industrial establishment or undertaking" means an establishment or undertaking in which in industry is carried on.*

Provided that where several activities are carried on in an establishment or undertaking and only one or some of such activities is or are an industry or industries, then-

(a)If any unit of such establishment or undertaking carrying on any activity, being an industry, is severable from the other unit or units of such establishment or undertaking, such unit shall be deemed to be a separate industrial establishment or undertaking."

Chapter V-B of industrial Disputes act contains Sections 25-K to 25-S.

Section 25K provides that the provisions of Chapter V-B shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months.

Section 25L (a) defines the industrial establishment which reads as under:-

"(a) "Industrial *establishment" means-*

(i) a factory as defined in clause (m) of Section 2 of the Factories Act, 1948 (63 of 1948);
(ii) a mine as defined in clause (j) of sub-section (1) of Section 2 of the Mines Act, 1952 (35 of 1952); and
(iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act,1951 (69 of 1951);

(b) notwithstanding anything contained in sub-clause (ii) of clause (a) of Section,--

(i) in relation to any company in which not less than fifty-one percent of the paid-up share capital is held by the Central Government, or

(ii) In relation to any corporation (not being a corporation referred to sub-clause (i) of clause (a) of Section 2) established by or under any law made by Parliament,

The Central Government shall be appropriate Government.

Section 25-N Conditions precedent to retrenchment of workmen – (1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one yea under an employer shall be retrenched by that employer until, --

(a) The workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice, and

(b) The prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the official Gazette (hereinafter in this section referred to as the specified authority) has been obtained on an application made in this behalf.

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment ad a copy of such application shall be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit ad after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the persons interested in such retrenchment, may, having regarding to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where an application for permission has been made under sub-section (1) and the appropriate Government or the specified authority does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days.

(5) An order of the appropriate Government or the specified authority granting or refusing to grant permission shall, subject to the provisions of sub-section (6), be final and binding on all the parties concerned and shall remain in force for one year from the date of such order.

(6) the appropriate Government or the specified authority may, either on its own motion or on the application made by the employer or any workman, review it order granting or refusing to grant permission under sub-section (3) or refer the matter, or, as the case may be, cause it to be referred, to Labour Court for adjudication:

Provided that where a reference has been made to a Labour Court under this sub-section,

it shall pass an award within a period of thirty days from the date of such reference.

(7) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.

(8) Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the establishment or death of the employer or the like, it is necessary so to do, by order, direct that the provisions of sub-section (1) shall not apply in relation to such establishment for such period as may be specified in the order.

(9) Where permission for retrenchment has been granted under sub-section (3) or where permission of retrenchment is deemed to be granted under sub-section (4), every workman who is employed in that establishment immediately before the date of application for permission under this section hall be entitled to receive, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months.

Section 38 of the industrial Disputes Act provides that the appropriate Government may, subject to the condition of previous publication, make rules **for the purpose of giving effect to the provisions of the Act.** The appropriate Government is defined under Section

2(a) of the industrial Disputes Act. State Government cannot be an appropriate Government in respect of the Industrial disputes referred in clause (i) of Section 2 (a) of the Industrial Disputes Act. Only Central Government shall be appropriate Government. Likewise the Central Government shall be the appropriate Government in relation to any Company in which not less than fifty-one per cent of the paid up share capital is held by the Central Government or in relation to any corporation (not being a corporation referred to sub-clause (i) of clause (a) of Section (2), established by or under any law made by Parliament as provided under clause (b) of Section 25L.

By virtue of clause (ii) of Section 2, the State Government shall be appropriate Government in respect of industrial disputes other than referred in clause (i) of Section 2(a) or clause (i) and (ii) of sub-section (b) of Section 25L.

There is no provision under the U.P. Industrial Disputes Act like provisions contained in Chapter V-B of the Industrial Disputes Act. Therefore, the provision of Chapter V-B shall ipso facto apply in State of Uttar Pradesh as it is the law made by the Parliament under Article 246(3) read with entry 22 of list III. It is in this legal back ground that the State of U.P. has made the Industrial Disputes (Uttar Pradesh) Rules, 1976 in exercise of the powers conferred by sub-section (1) of Section 38 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), after the same having previously been published for objection and suggestions vide Notification

No. 1819 (ST)/ XXXVI-I 127 (ST)-76, dated March 18, 1976 to give effect to the provisions of Chapter V-B of the Industrial Disputes Act in State of Uttar Pradesh.

Rule 2 provides the definition, which is reproduced as under:-

> *"2. Definition- In these rules, unless the context otherwise requires-*
> *(a) 'Act' means the industrial Disputes Act, 1947;*
> *(b) 'Form' means a form appended to these rues;*
> *(c) 'Section' means a section of the Act;*
> *(d) Words and expressions used in these rues and not defined therein, but defined in the Act shall have meanings assigned to them in the Act."*

Relevant Rule 4 for application of Section 25N in the State of U.P. reads as under:-

"4. Notice of, and application for permission for, retrenchment-

> *(1) Notice under clause (c) of sub-section (1) of Section 25N for retrenchment shall be served in Form 'D' on such authority as may be specified by the State Government either personally or by registered post acknowledgment due and where the notice is served by registered post, the date on which the same was delivered to such authority shall be made deemed to be the date of service f the notice for the purposes of sub-section (3) of the said section.*
>
> *(2) Application of permission for retrenchment under sub-section (4) of Section 25N shall be made in Form 'E' (with attested copy of the notice given by the employer under clause (a) of Section 25-F and delivered to such authority as may be specified by the State*

Government either personally or by registered post acknowledgement due and where applications sent by registered post the date on which the same was delivered to the State Government or the authority shall be deemed to be the date on which the application was made for the purposes of sub-section (5) of the said section.

(3) The notice or, as the case may be, the application shall be served in triplicate and sufficient number of copies of the application for service on the workmen concerned shall be submitted along with the notice or, as the case may be, the application.

(4) the employer concerned shall furnish to the State Government or the authority to whom the notice for retrenchment has been given under clause (c) of sub-section (1), or, as the case may be, sub-section (4) of the said Section 25-N, such further information as the State Government or, as the case may be, the authority considers necessary for arriving at a decision on the notice or, as the case may be, application, as and when called for by such authority, so as to enable the State Government or the authority to communicate its permission or refusal to grant permission within the period specified in sub-section (3), or, a the case may be, sub-section (5) of the said Section 25-N."

The appropriate Government by framing the Rules known as The Industrial Disputes (Uttar Pradesh) Rules, 1976 have made the Section 25N applicable in relation to industrial establishment in/of State of U.P., which is an industrial establishment as defined under Section 25L of Chapter V-B.

Therefore, I hold that the industrial establishment in/of State of U.P. which falls within the definition of

Section 25L of Industrial Disputes Act, retrenchment therein shall be made strictly in accordance with the provisions of Section 25N of the Central Act read with Section 4 of The Industrial Disputes (Uttar Pradesh) Rules, 1976. Any retrenchment made in violation of this Section shall be void.

Now, the question remains as to whether the Forest Corporation is an industrial establishment within the definition of Section 25L or not.

The U.P. Forest Corporation is created under the U.P. Forest Corporation Act, 1974 with an object for better preservation, supervision and development of forests and better exploitation of forest produce within the State and for matters connected therewith. Section 2 of the Act is a definition clause, Section 3 provides for establishment of the Corporation and Section 4 provides for Constitution of the Corporation. The functions and powers of the Corporation are provided under Sections 14 and 15 respectively, which are reproduced as under:-

> *"14. Functions of the Corporation:- Subjection to the provisions of this Act, and to any general or special directions of the State Government, the functions of the Corporation shall be following, namely-*
>
> *(a) to undertake removal and disposal of trees and exploitation of forest resources entrusted to it by the State Government;*
>
> *(b) to prepare projects relating to forestry within the State;*
>
> *(c) to undertake research programmes relating to forests and forest products and render technical advice to State*

Government on matters relating to forestry:

(d) to manage, maintain and develop such forests as are transferred or entrusted to it by the State Government;

(e) to perform such functions as the State Government may from time to time require.

15. Powers of the Corporation:- (1) The Corporation Shall, subject to the provisions of this Act, have power to do anything which may be necessary or expedient for carrying out its functions under this Act.

(2) Without prejudice to the generality of the foregoing provision, such power shall include the power-

(a) to set up workshop or factories for procession forest raw materials:

(b) to establish, maintain and operate laboratories and experimental and research stations:

(c) to enter into such contract or arrangement with any person as the Corporation may deem necessary for performing its functions under this Act;

(d) to borrow, money, issue debentures and manage its fund; and

(e) to incur expenditure and grant loans and advances to such persons as the Corporation may deem necessary for performing its functions under this Act.

Section 16 provides power of the Corporation to undertake projects at the instance of others.

From the perusal of the functions and power including the power to undertake projects at the instance of others shows that the Corporation is totally a commercial corporation, which undertakes removal and disposal of the trees and exploitation of forest resources

entrusted to it by the State Government and prepare projects relating to forestry and to undertake research programmes relating to forests and forest projects and render technical advice to the State Government on matters relating to forestry and to manage, maintain and develop such forests as are transferred or entrusted to it by the State Government. The Corporation has power **to set up workshops or factories for processing forest raw material, to establish maintain and operate laboratories and experimental and research stations, to enter into any such contract or arrangements with any person as the Corporation may deem necessary for performing its functions under this Act.**

The Corporations for the purpose of exploitation of forest resources entrusted to it by the State Government for removal and disposal of trees may set up workshop or factories for processing raw material.

Whether the area allotted to the Forest Corporation by the State Government, for cutting, removal, disposal and sale of the trees and the process applied there for falls within the definition of the factory as defined under Section 2(m) of the Factories Act?

Section 2(m) of the Factories Act, 1948 defines the factory, which reads as under:-

> *"factory" means any premises including the precincts thereof-*
> *(i) …. ….*
> *(ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve*

months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on –

The first requirement of the definition of the factory is that it should be in any "premises or precincts thereof." The main objection of the respondents is that the Forest Corporation does not work in any premises or precincts thereof. The corporation undertakes to set up workshops at different places, which cannot be said to be a factory. On this basis, the Labour Court held that the Forest Corporation cannot be said to be factory.

A Constitution Bench of the Apex Court in **Ardheshir H. Bhiwandiwala v. State of Bombay** (supra) considered the meaning of the premises including the precincts thereof and in paras 5 and 6 held as under:-

"5. It is contended for the appellant that the expression 'premises' in the definition of the word 'factory' means 'buildings' and that 'mere open land' is not covered by the word 'premises' and as there are no buildings except temporary sheds on the Salt Works, the Salt Works cannot be said to be a 'factory'. We do not agree with this contention. The word 'premises' has now come to refer to either land or buildings or to both, depending on the context. The meanings of the word 'premises' in various lexicons and dictionaries are given below:-

(a) Wharton's Law Lexicon: 'Premises' is often used as meaning 'land or houses'

(b) Cochran's Law Lexicon, IV Edition: 'premises' means 'houses or lands'

(c) Black, H.C. Law Dictionary, IV Edition: 'Premises' as used in the estates means-

(i) Lands and tenements; and estate; land and buildings thereon, the subject matter of the conveyance;

(ii) a distinct and definite locality and may mean a room, especially building or other definite area;

(d) Earl Jowitt, Dictionary of English Law: 'Premises' … from this use of the word, 'premises' has gradually acquired the popular sense of land or buildings. Originally, it was only used in this sense by laymen, and it was never so used in well-drawn instruments, but it is now frequently found in instruments and in Acts of Parliament as meaning land or houses, e.g. the Public Health Act,1875. S.4 where 'premises' includes messuages, buildings, lands, easements, tenements and hereditaments, of any tenure … …

(e) Ballentine, J.A., Law Dictionary with Pronuciation, II Edition: 'Premises' – as applied to land, Webster's New International Dictionary defines the word as follows: The property conveyed in a deed; hence, in general, a piece of land or real estate; sometimes, especially in fire insurance papers, a building or buildings on land, the premises insured.

It is therefore clear that the word 'premises' is a generic term meaning open land or land with buildings or buildings alone.

(1) The expression 'premises including precincts' it has been urged, clearly indicates that in the context of the definition of the word 'factory' premises meant only building as buildings alone can have precincts and there can be no precincts of any open land. This expression 'premises including precincts' does not always have precincts. Even buildings need not have any precincts. The word 'including' is not a term restricting the meaning of the world 'premises' but is a term which enlarges the scope of the word 'premises'. We are therefore of opinion that even this contention is not sound and does not lead to the only conclusion that the word 'premises' must be restricted to mean buildings and be not taken to cover open land as well."

The Apex Court in ***Grauer & Well (India) Ltd. v. Collector of Central Excise, Baroda, reported in 1995 (1) SCC 77*** have given the same meaning of the word

'premises' which has been referred by the **Labour Court in its judgment but applied the same incorrectly.** The relevant paragraph – 11 of the above judgment is reproduced as under:-

> *"From a bare perusal of the **definition of factory** under Section 2(m) of the Factories Act, it is patent that if an any premises including the precincts thereof ten or more workers are working or were working on any day of the preceding twelve months, and in any part thereof a manufacturing process is being carried on with the aid of power it would be a factory. Ordinarily meaning of the word 'premises' is a piece of land including its buildings or a building together with its grounds or appurtenances and precincts mean the areas surrounding a place. The words 'any premises including the precincts thereof" under Section 2(m) are therefore wide enough to include all buildings with its surroundings which form part of one unit. If therefore in such an area ten or more workers are working and in any part thereof manufacturing process is being carried on with the aid of power it would be a 'factory' within the meaning of Section 2(m)."*

The judgment of **Ardheshir H. Bhiwandiwala v. State of Bombay** (supra) was followed by the Apex Court in ***Lal Mohammad v. Indian Railway Construction Company Ltd. [1999 LAB. I.C. 407]*** holding the project undertaken by the Railway Construction Company to be a factory.

In the present case, the Forest Corporation carry on the activity of cutting, removal, disposal and sale of the trees over **area of land** allotted to the Corporation. Therefore, the area of land over which such activity is

carried on is 'premises'. Therefore the first requirement of definition of the factory is satisfied in the present case.

The second requirement of the definition of factory is whether any manufacturing process is carried on or not.

The manufacturing process is defined under Section 2(k) of the Factories Act which reads as under:-

> *"manufacturing process" means any process for-*
>
> *(i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal, or*
>
> *(ii) … …*
>
> *(iii) … …*
>
> *(iv) … …*
>
> *(v) … …*
>
> *(vi) … …*

In view of the aforesaid definition for 'manufacturing process' the following ingredients must be fulfilled:-

(a) Making any article or substance with a view to its use, sale, transport, delivery or disposal;

(b) altering any article or substance with a view to its use, sale, transport, delivery or disposal;

(c) repairing any article or substance with a view to its use, sale, transport, delivery or disposal;

(d) finishing any article or substance with a view to its use, sale, transport, delivery or disposal;

(e) shaping any article or substance with a view to its use, sale, transport, delivery or disposal;

breaking up any article or substance with a view to its use, sale, transport, delivery or disposal; adapting any article or substance with a view to its use, sale, transport, delivery or disposal.

Clause (ii) to (vi) of Section 2k of the Factories Act is not attracted.

Article means a piece of goods or property meaning thereby it should be a tangible substance as held by the Apex Court in **Zaffar Mohammad v. State of West Bengal, AIR 1976 SC 171.**

The trees which are allotted to the Forest Corporation in the area of the region are rooted in the earth being things attached to the earth are immovable property by the definition of immovable property given in General Clauses Act, while timber/logs are wood cup up and sawn as held by the Apex Court in **State of Orissa v. Titaghur Paper Mills Co. Ltd. reported in 1985 Supp SCC 280** in para 90 as under:-

"*On turning to various dictionaries, we find that the dictionary meaning largely coincides with the statutory meaning of the word 'timber'. While discussing the question of the subject-matter of the impugned provisions we have set out the definition of the word 'timber' contained in the Webster Collegiate Dictionary occurring in the passage from the judgment of Vivian Bose, J., in Shrimati Shantabai v. State of Bombay. The relevant meanings of the term 'timber' given in the Shorter Oxford Dictionary, Third Edition are 'building material generally; wood used for the building of houses, ships,*

etc., as for the use of the carpenter, joiner or other artisan'. This definition also states that the word is 'applied to the wood of growing trees capable of being used for structural purposes; hence collectively to the trees themselves.' Amongst the meanings given in the Concise Oxford Dictionary, Sixth Edition, are 'wood prepared for buildings, carpentry, etc.; trees suitable for this; woods, forests, piece of wood, beam'. One of the meanings of the word 'timber' given in Webster's Third New International Dictionary, is 'wood used for suitable for building (as a house or boat) or for carpentry or joinery'. A 'log' according to the Shorter Oxford English Dictionary means 'a bulky mass of wood; now usually an unhewn portion of a felled tree, or a length cut off for firewood' and according to the Concise Oxford Dictionary it means 'unhewn piece of felled tree, or similar rough mass of wood especially cut for firewood;. ***Thus, logs will be nothing more than wood cut up or sawn and would be timber."***

Cutting of trees by axe and shaping the cut trees into logs which is sold by the Forest Corporation is a manufacturing process as process of making, altering or shaping of an article is carried on inasmuch as the trees after being cut are converted and altered into logs for sale as timber. Cutting of trees and converting them into logs by employing the implements through the mechanical process with aid of workmen without aid of power is manufacturing process in which the logs and timber are a product produced after cutting of the trees which are immovable property **by axe and shaping them into logs by use of sawn by workmen into logs, which becomes article** or movable substance and is sold by Forest Corporation. Therefore, the ingredients of manufacturing process contained in clause (ii) of the definition are

fulfilled. Thus, every such unit is held to be a "factory" of the Forest Corporation (region-wise) within the State and held to be an industrial establishment within the meaning of 25-L of the Industrial Disputes Act, as defined in clause (ii) of Section 2 (m) of the Factories Act.

The finding recorded by the Labour Court is contrary to the definition of manufacturing process. The definition of manufacturing process is wide enough to cover the making and finishing of article for sale, which is done by the workers employed by the Corporation in the region of the Forest Corporation.

The manufacturing process is carried on without the aid of power by the workers and more than twenty or more workers are working or were working on any day of the preceding twelve months, which is not disputed. Therefore, requirement of Section 25K is fulfilled.

Thus, it is seen that all the requirements of Section 25K and Section 25L are fulfilled. As such the provisions of Section 25N, contained in Chapter V-B are attracted. The finding recorded by the Labour Court that the Forest Corporation is not an industrial establishment within the meaning of Section 25L of the Industrial Disputes Act is not correct and is liable to be set aside.

The Labour Court held that since the reference was made under Section 4-K of the U.P. Industrial Disputes Act, Section 25-N of the Central Act was not attracted. It has wrongly applied the judgment of the Apex Court in ***U.P. Electric Supply Co.Ltd., v. R.K. Shukla and***

another, reported in 1969 (2) SCC 400 as the said judgment was rendered by the Apex Court prior to the amendment brought in the Industrial Disputes Act adding Chapter V, which is evident from the following paragraph:-

> *"Some argument was advanced before us that in determining matters relating to the award of retrenchment compensation, the provisions of the Industrial Disputes Act, 1947, and not the U.P. Industrial Disputes Act, 1947, apply. The question is academic, because on the points in controversy between the parties, the statutory provisions of the Industrial Disputes Act, 1947, and the U.P. Industrial Disputes Act, 1947, are substantially the same."*

In the instant case the question of applicability of provisions contained in Chapter V-B has arisen which was not a question before the Apex Court in case ***U.P. Electric Supply Co. Ltd., v. R.K. Shukla and anther*** (supra). The Chapter V-B was inserted by the Industrial Disputes (amended) Act, 1976 (Act No. 38 of 1976).

The judgment is prior to amendment, the ratio of the aforesaid judgment is not attracted in the facts and circumstances of the present case.

The validity, legality or illegality, of a retrenchment order referred for adjudication does not depend on the factor that under which provision the reference is made, i.e., either under Section 4-K of the U.P. Industrial Disputes Act or under Section 10 of the Central Act. The Validity of the retrenchment is to be judged whether the

retrenchment is in accordance with the provisions of either 6-N of the U.P. Industrial Disputes Act which is para material with Section 25-F of the Industrial Disputes Act or is in accordance with Section 25-N of the Industrial Disputes Act is attracted in the facts and circumstances of the case. As it has been held in this judgment that in the facts are circumstances of the case, 25-N of the Industrial Disputes Act was attracted, therefore, the validity of the retrenchment order is to be adjudged solely by determining the question as to whether the provisions of Section 25-N of the Industrial Disputes Act were complied with or not.

Thus, the finding recorded by the Labour Court is incorrect and is liable to be set aside and is hereby set aside on this point also.

It is not disputed that the retrenchment was made without complying the provisions of Section 25N of the Industrial Disputes Act, which is directly attracted in the facts and circumstances of the present case. The effect of the aforesaid conclusion is that the retrenchment of such workmen without following the condition precedent to retrenchment as provided under Section 25N of the Industrial Disputes Act are necessarily treated to be void and have no legal effect and the employer-employee relationship between the parties did not get snap (see ***Lal Mohammad v. Indian Railway Construction Company Ltd.)***

The writ petitions are allowed. The findings of the Labour Court that Section 25N is not attracted but only 6N was attracted, is also set aside for the reasons recorded above and the orders of retrenchment of the petitioners being in violation of Section 25-N of the Industrial Disputes Act, are also quashed. The petitioners shall be put back on duty and shall be paid salary/wages. There will be no order as to costs.

(P. C. Verma, J.)

21.08.2003
P. Singh